Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Rural Call Completion	)	WC Docket No. 13-39

REPLY COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) submits these reply comments to express support for proposals that would ensure existing rules governing covered providers and new rules implementing the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act) are applied in a thoughtful and coordinated manner. In particular, with the implementation of the quality standards and registry mandated by the RCC Act, the Commission can now hold intermediate providers and covered providers directly responsible for their rural call completion performance and can avoid imposing liability on any party for actions beyond its direct control. In addition, the Commission should adopt proposals to better coordinate the timing of the existing monitoring rules for covered providers with any new rules implementing the RCC Act by extending the October 2018 effective date of the monitoring rules.

I. THE COMMISSION SHOULD ESTABLISH A REGULATORY REGIME THAT ONLY REQUIRES PROVIDERS TO MONITOR THE PERFORMANCE AND REGISTRATION STATUS OF INTERMEDIATE PROVIDERS WITH WHICH THEY HAVE A CONTRACTUAL RELATIONSHIP.

As the Commission explained in the *Notice*, the RCC Act gives the Commission significant new tools to address persistent problems with rural call completion.[1] The combination of the existing monitoring rule with the RCC Act's required registry and quality standards will enable the Commission to establish a comprehensive regulatory regime guided by

[1] *Rural Call Completion*, WC Docket No. 13-39, Second Report and Order and Third Notice of Proposed Rulemaking, FCC 18-45, at ¶ 68 (Apr. 17, 2018) (*Notice*).

the principle that all providers should be held responsible only for monitoring the performance and registration status of providers with which they directly contract.[2] Such an approach should give all parties, including the Commission, the ability to identify and resolve persistent problems with rural call completion.

Applying this approach to the proposals in the *Notice*, NCTA agrees with Comcast that the Commission should "reject sweeping proposals that would disproportionately burden covered providers" and instead should "require both originating and terminating providers to: (1) maintain a list of service providers with which they have a *direct* contractual relationship to complete calls; and (2) verify that these providers are registered."[3] Under this approach, the Commission will have the ability to identify all providers that a company has contracted with and hold any provider that chooses to rely on an unregistered intermediate provider accountable for that choice. As Comcast explains, the alternative approach of "requiring covered providers to obtain [downstream intermediate provider] information through contractual commitments would be an administrative nightmare."[4]

NCTA also agrees that intermediate providers should have the same flexibility as covered providers with respect to the specific practices they use to ensure that calls are completed. For example, Verizon is correct that "compliance with ATIS best practices should be voluntary, not mandatory."[5] As the Commission explained, converting these voluntary best practices into mandatory rules would have a "chilling effect on future industry cooperation" to develop

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2 NCTA Comments at 3; *see also* ITTA Comments at 12 ("By directly addressing intermediate providers rather than circuitously addressing them via increased monitoring burdens on covered providers, the 2017 RCC Act's provisions, unlike the rules adopted in the *Second RCC Order*, are properly focused.").

3 Comcast Comments at 2 (emphasis in original).

4 *Id*. at 3.

5 Verizon Comments at 8.

solutions to industrywide problems.[6] The better approach is for all providers to have "the ability to choose appropriate methods to evaluate service quality based on their individual networks, business needs, and contractual relationships."[7]

II. THE COMMISSION SHOULD ADDRESS SITUATIONS WHERE THERE ARE NO REGISTERED INTERMEDIATE PROVIDERS.

The Commission sought comment on whether it should adopt any exceptions to the prohibition on using unregistered providers.[8] NCTA agrees with ATIS that an exception to the requirement is necessary in situations where "there are no registered intermediate carriers serving a specific area and no direct connection to that service area available (such as in some U.S. territories)."[9]

If no registered intermediate providers are serving a particular rural area, a covered provider's only alternative would be to refuse to complete calls to the rural area, which would violate the Commission's long-standing "no blocking" rule. Holding covered providers liable for using an unregistered provider in these circumstances would be directly contrary to the RCC Act's goal of preventing "unjust or unreasonable discrimination among areas of the United States in the delivery of [voice] communications,"[10] and the Commission's goal of ensuring "that calls are indeed completed to all Americans—including those in rural America."[11] The Commission should therefore make clear that providers will not be held liable for a violation of the "use" requirement in these circumstances. The RCC Act's legislative history also suggests that

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6 *Notice* at ¶ 19.

7 Verizon Comments at 10.

8 *Notice* at ¶ 83.

9 ATIS Comments at 4.

10 S. Rep. No. 115-6 at 1 (2017), *as reprinted in* 2018 U.S.C.C.A.N. 16, 16.

11 *Notice* at ¶ 2.

Congress envisioned there would be some *de minimis* gaps in the Act's coverage. That the RCC Act would prohibit covered providers from using "an unregistered intermediate provider to transmit *most* voice communications"[12] suggests that Congress recognized that some calls may continue to be handled by unregistered providers.[13]

III. THE COMMISSION SHOULD BETTER COORDINATE THE TIMING OF THE MONITORING RULES AND ANY NEW RULES IMPLEMENTING THE RCC ACT.

In prior filings, NCTA explained the operational challenges that the monitoring rule would create for covered providers. In particular, we explained that "compliance with the proposed rules will require every originating provider to review all of its contracts with intermediate providers and to renegotiate many of those agreements."[14] In light of the "complex and time-consuming nature of this task," we proposed that the Commission establish a 12-month transition period, starting from the time when the Office of Management and Budget (OMB) approves the new rules pursuant to the Paperwork Reduction Act (PRA).[15]

The Commission agreed with NCTA's recommendation to adopt a transition period because it was "persuaded that covered providers will need some time to evaluate and renegotiate contracts with intermediate providers."[16] Unfortunately, the Commission found, without any evidence, that "a six-month transition period will suffice."[17] In addition, notwithstanding the obvious paperwork burdens created by the monitoring rule, the Commission

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[12] S. Rep. No. 115-6 at 5-6, 2018 U.S.C.C.A.N. at 21 (emphasis added).

[13] The Commission also should consider whether additional flexibility may be appropriate in areas where only one registered intermediate provider exists.

[14] Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 (Apr. 11, 2018).

[15] *Id*.

[16] *Notice* at ¶ 50.

[17] *Id*.

asserted that there is no need for approval by OMB pursuant to the PRA and therefore it commenced the transition period from the date the order was released.[18]

The record plainly demonstrates that the six-month transition period adopted in the *Order* is inadequate and that it should be extended, or stayed,[19] until the Commission establishes registration and quality standards for intermediate providers pursuant to the RCC Act. As explained by Verizon and USTelecom, it is not feasible for covered providers to renegotiate their arrangements with intermediate providers until it is clear which providers are required to register and the Commission has prescribed the service quality standards that will apply to those providers.[20] Requiring covered providers to develop monitoring systems that may need to be modified shortly after they are developed is a waste of resources that would be better devoted to collaborative efforts among covered and intermediate providers to resolve rural call completion issues.[21]

The Commission also should ensure that covered providers have sufficient time after the registry takes effect before enforcing the requirement that covered providers use only registered providers. NCTA agrees with the significant number of commenters who point out that it will take time to renegotiate contracts with intermediate providers to reflect the registration requirement.[22] Indeed, no commenters suggest otherwise. Not only will multiple contract terms

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[18] *Id*., n.173. The Commission's assertion that the monitoring requirement does not require approval under the PRA is difficult to reconcile with the extremely broad definition of "information collection" under OMB rules. *See* 5 C.F.R. § 1320.3(c)(1) (definition includes "recordkeeping requirements" and "procurement requirements").

[19] *See* USTelecom – The Broadband Association Petition for Stay, WC Docket 13-39 (June 11, 2018).

[20] *See* USTelecom Comments at 8-10; Verizon Comments at 13-14.

[21] *See* Verizon Comments at 13-14.

[22] ANI Comments at 4; ATIS Comments at 3-4; INCOMPAS Comments at 7-9; ITTA Comments at 4-5; Sprint Comments at 2-3; West Telecom Services Comments at 10.

likely require revision, but covered providers will need to revisit the contracts with all of their intermediate providers simultaneously. As Sprint correctly points out, "[t]here may be multiple sections in any given contract that need to be amended, and a covered provider may need to negotiate contract amendments with multiple intermediate carriers."[23] Until covered providers know which intermediate providers have registered and which ones have not, it will be impossible to comply with such a requirement. And even after intermediate providers have made the decision to register or not, covered providers will need time to replace any intermediate providers that chose not to register. NCTA agrees with INCOMPAS that an additional six months, at a minimum, will be necessary.[24]

For similar reasons, NCTA reiterates its request that when an intermediate provider is removed from the registry, the Commission's rules should afford the covered provider (or an upstream intermediate provider) reasonable notice and an opportunity to remedy the noncompliant arrangement.[25] The Commission should require intermediate providers to directly notify all affected covered and intermediate providers that the intermediate provider is no longer registered.[26] Absent a notification requirement, providers will be left without any efficient, reliable, or timely way to know that their arrangements have become noncompliant.

Furthermore, once notified, a covered provider should be afforded a reasonable period of time to transition to alternative providers without penalty or threat of enforcement. Covered providers should not be held liable for using an unregistered intermediate provider during the

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[23] Sprint Comments at 3.

[24] INCOMPAS Comments at 8-9.

[25] NCTA Comments at 6 ("The situation is more complex when an intermediate provider loses its registration during the term of an agreement. In that scenario, the Commission's rules should ensure that the covered provider (or an upstream intermediate provider) is given reasonable notice and an opportunity to fix the noncompliant arrangement." (footnote and internal quotation marks omitted)).

[26] *Id.*

pendency of the covered provider's efforts to transition to another provider or otherwise remedy the arrangement. NCTA urges the Commission to adopt its proposal of a six-month period to transition to other providers, without risk of an enforcement action.[27] It takes time for covered providers to restructure their call routes, renegotiate their relationships with intermediate providers, or make the appropriate contractual arrangements to transition to alternative providers. Without a transition period, covered providers would be left with no option other than to decline to complete calls on the affected route. Such a result would be directly contrary to the RCC Act's purpose to ensure that calls to rural areas are completed consistently.

CONCLUSION

For all the reasons explained above, the Commission should implement the provisions of the RCC Act through rules that only hold providers responsible for monitoring the performance and registration status of intermediate providers with which they have a contractual relationship. In addition, the Commission should defer the effective date of the monitoring rules until after any new rules implementing the RCC Act take effect and provide covered providers sufficient time to comply with any new obligations established pursuant to the RCC Act.

Respectfully submitted,

/s/ Steven F. Morris

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[27] *Id.*